



## The EU Faces Challenges in Anti-Corruption Directive Negotiations

Stefania Kolarz

Work on the draft directive on combating corruption has been halted due to a lack of consensus between the European Parliament (EP), which seeks to strengthen the EU's instruments in this area, and the Council, some of whose members are proposing changes that could weaken the impact of the new legislation. The delay in work on it and the lower level of ambition are detrimental to the EU as it sends a message to its citizens and third countries that resolving this problem is of relatively low importance, even though effectively combating corruption is supposed to be a condition for deepening cooperation with the Union.

**Context of the Project.** The proposal put forward by the Commission in 2023 was intended to be a response to problems plaguing the EU, including the [“Qatargate” scandal](#) and difficulties in fighting corruption in its Member States, primarily in Hungary, but also in Belgium, France, Germany, and Slovakia. Not only do these problems remain unresolved but they have also deepened. In last year's Transparency International ranking, 17 out of 27 EU Member States scored worse, and in March this year, media reported on corruption in the European Parliament involving the Chinese company Huawei. The proposed act is intended to strengthen the EU and its Member States by protecting the economy from losses due to corruption (estimated at €179-990 billion per year, depending on whether indirect costs are included or not). It also could increase public confidence in EU countries and institutions and support the provision of higher quality public services. The adoption of the Directive would also support the implementation of obligations under the 2003 United Nations Convention Against Corruption (UNCAC), to which the EU is a party alongside its Member States, and would force its institutions and bodies to introduce higher standards of transparency and integrity.

The Directive is needed to fill gaps in the anti-corruption system at the EU and national levels. EU legislation contains fragmented instruments to combat corruption in certain sectors, such as public procurement and financial

institutions. The European Anti-Fraud Office (OLAF) and the [European Public Prosecutor's Office](#) serve to protect the Union's finances as a whole. However, there are differences between national systems, creating loopholes that allow corruption to flourish, as certain behaviours are punishable in some countries but not in others. An additional variable is how lobbying—a legal, yet problematic activity—is defined and the requirements for registering this type of activity. For example, in the Netherlands it is voluntary (72 people registered last year), in Poland it is narrowly defined (only 19 people had to register last year), while in France and Germany, which have broader requirements, thousands of lobbyists are registered. National legislation also differs in terms of the requirements for political parties to disclose their sources of funding—in only seven EU countries do they have to disclose all private donors. The adoption of the Directive is therefore intended to indirectly systematise these issues and, according to the Commission, respond to the challenges of adapting corrupt practices to changing reality, including the use of new technologies in communication, supplementing national legislation in this area.

**Assumptions of the Directive.** It aims to introduce minimum harmonisation, including standardising the definitions of corruption offences and the methods of punishing them in the EU. Under the Directive, corruption will include bribery

in the public and private sectors, misappropriation, trading in influence, abuse of functions, and obstruction of justice. The act is also intended to facilitate the lifting of immunity for public officials through more transparent and systematic procedures (it will not, however, infringe on the competences of Member States in this area, as requested by Czechia and Austria, among others). In practice, these measures may lead to the extension of the criminalisation of corrupt practices in countries where they were narrowly defined, and in the longer term, to greater accountability, especially in cross-border situations.

From the perspective of the legal systems of many EU countries, emphasising the role of the private sector is a novelty. On the one hand, the EU wants to combat corruption in this sector as well (by penalising actions that harm companies), and on the other hand, to discourage business representatives from bribing officials. The draft Directive provides for deterrent penalties for companies in this regard, including fines based on their annual global turnover, disqualification from applying for public aid, temporary exclusion from public procurement, a ban on commercial activities, and even forced liquidation. The proposal also identifies a number of other measures aimed at preventing corruption, for example, it obliges countries to organise public awareness campaigns on the harmful effects of corruption, identify the sectors most vulnerable to it, and develop action plans for them.

A new solution proposed by the EP is to guarantee procedural rights to civil society organisations and victims of corruption, including the possibility for the latter to claim compensation.

**Controversy Surrounding the Draft Act.** In June, the EP and the Council failed to agree on the final text of the Directive, as Parliament was in favour of strengthening its provisions (e.g., greater transparency of political party financing), while the Council aimed at weakening them, for example, by shortening the statutes of limitation.

The main obstacle to the adoption of the act is, however, the desire of some countries to change the classification of abuse of functions from a criminal to an administrative offence. According to Italy and Germany, supported by the Netherlands, Luxembourg, and Hungary, maintaining a criminal classification, which is what the EP is striving for, threatens to lead to show trials and discourage people from taking up employment in public administration or in the implementation of publicly funded projects. Moreover, Italy removed this offence from its criminal law last year. Fears of proceedings being brought against officials were said to have caused some of them who were particularly vulnerable to allegations of conflict of interest in small communities with

strong social and family ties to delay decision-making (yet, some media outlets suggested that this was due to problems with combating organised crime). The adoption of the Directive as written would therefore force them to recriminalise this offence. Changing the classification of abuse of functions is unacceptable from the EP's perspective, as it will weaken the effects of the Directive, indirectly encouraging abuse. According to civil society organisations, it would also send the wrong signal to EU citizens and candidate countries that the EU is not committed to effectively combating corruption within its borders. It would also expose the EU to accusations of hypocrisy, as between 2018 and 2021, France, the Netherlands, and Germany blocked the start of accession talks with Albania, citing its unresolved corruption problem as one of the reasons, and recently the EU threatened Ukraine with suspending accession negotiations in connection with its [attempt to abolish the independence of anti-corruption institutions](#).

On another point, Germany questions the need to develop anti-corruption strategies and collect statistical data on corruption in individual countries, as provided for in the draft Directive. However, the EP warns against removing these obligations from the draft as it could weaken the preventive dimension of the negotiated act.

**Conclusions and Outlook.** The current Danish presidency, which announced that it will continue work on the act and is a global leader in the fight against corruption according to Transparency International, has offered a chance for the act to be adopted by the end of this year. This is important from the perspective of Poland, which sought this during its recent presidency of the Council. The smooth adoption of the act in the version proposed by the EP would be beneficial for the EU as it would send a clear signal to its citizens and partners that it is committed to solving this problem.

In the short term, the Directive will not solve all corruption-related problems facing the EU and its Member States. For example, it will be insufficient with regard to lobbying, which requires separate regulation. However, adoption of the act would be an important step in that direction. Despite operating on the basis of minimum harmonisation, it could prevent EU countries from lowering their standards, as happened in Italy. The approximation of national laws would also facilitate the prosecution of cross-border crimes. The proposed increase in the involvement of non-governmental organisations provides an opportunity to strengthen public control over the spending of public funds, and the Directive may improve the situation of victims, as until now many countries have not provided them with a direct means of pursuing claims related to corruption offences.